

## WAC 458-61-410 Gifts.

- (1) **In General.** Transfers of Real property as gifts are not subject to the real estate excise tax provided that the transfer is without consideration or that love and affection is the only consideration.
- (2) **Consideration.** When any consideration other than love and affection is present in the transfer, the transaction is taxable to the extent of the consideration present. Consideration includes the indebtedness balance of any real property transferred which is encumbered by a lien securing an indebtedness. See WAC 458-61-030 (3) for the full definition of "consideration".
  - (a) **Examples.** Mother, A, conveys lakefront cabin valued at \$200,000 to daughter, B. The tax consequences will vary dependent on whether B tenders consideration and the amount and the extent of A's equity. Consider:
    - (i) **Example 1.** No consideration given by B and A owns property outright. This is a gift by A to B of \$200,000 and exempt from the real estate excise tax.
    - (ii) **Example 2.** No payment given to A by B. A has \$175,000 equity and an underlying mortgage of \$25,000. The \$175,000 in equity is a gift, but the real estate excise tax applies to the \$25,000 owing on the mortgage.
    - (iii) **Example 3.** No consideration is given by B. A has \$175,000 equity and an underlying mortgage of \$25,000, on which A continues to make the payments. This is a gift by A to B of the \$175,000 and the payments on the underlying debt. It is exempt from the real estate excise tax.
    - (iv) **Example 4.** B gives A \$10,000 and A owns property outright. A has made a gift of \$190,000 in equity and real estate excise tax applies only to the \$10,000 paid by B for the property.
    - (v) **Example 5.** B gives A \$10,000 and A has \$175,000 in equity and an underlying mortgage of \$25,000. A has made a gift of \$165,000 in equity, but the real estate excise tax applies only to \$35,000: The \$10,000 paid by B to A for the property and the \$25,000 remaining on the mortgage.
- (3) **Documentation.** Completion of the real estate excise tax affidavit is required for transfers by gift.
  - (a) A supplemental statement (see WAC 458-61-150) shall be signed by both Grantor and Grantee and attached to the real estate excise tax affidavit. The statement shall attest to the existence or absence of underlying debt on the property transfers made by gift.

*In general, a refinance of indebtedness will be taxable to the extent of relief of liability for the Grantor(s). If a person is exiting title during a refinance, that person is being relieved of liability for the old loan that is being paid off by the refinance. If a person is being added to title, the new person is becoming a co-borrower with the Grantor and is relieving the Grantor of a portion of their liability for the old loan. For refinances, please see WAC 458-61-650 or contact your County Treasurer's Office.*

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